CITY COUNCIL AGENDA REPORT

MEETING DATE: June 21, 2011 **ITEM NUMBER:**

SUBJECT: **TRAFFIC MANAGEMENT SERVICES AGREEMENT WITH THE 32ND DISTRICT AGRICULTURAL ASSOCIATION.**

DATE: **JUNE 8, 2011**

FROM: **POLICE DEPARTMENT- SUPPORT SERVICES DIVISION**

PRESENTATION BY: **DAVID MAKIYAMA, SGT.**
TRAFFIC SAFETY BUREAU, SPECIAL EVENTS SUPERVISOR

FOR FURTHER INFORMATION CONTACT: **DAVID MAKIYAMA, SGT**
(714) 754-4963

RECOMMENDED ACTION:

Approve the 2011 contract for traffic management services between the Costa Mesa Police Department and the 32nd District Agricultural Association for the Orange County Fair. Authorize the Chief Executive Officer or his designee, to sign the contract. The term of the agreement is July 15, 2011 through August 14, 2011 and the maximum amount is $375,000.

BACKGROUND:

Each year, the Police Department enters into a contract agreement to provide traffic management services to the 32nd District Agricultural Association. This contract only applies to the annual Orange County Fair.

The State of California requires the governing agency (City Council) to approve all contracts before payment can be made.

ANALYSIS:

The Costa Mesa Police Department requests authorization to enter into a contract with the 32nd District Agricultural Association for traffic management during the 2011 Orange County Fair at the Orange County Fairgrounds and Exposition Center. The contract exclusively covers payment to Police Department personnel involved in traffic management during the Fair, which runs from July 15, 2011 through August 14, 2011. The contract is not to exceed three hundred seventy-five thousand dollars ($375,000).

Cost estimates are based on the City of Costa Mesa Administrative Regulation governing special event rates per employee, (A.R. 2.13 Section 1-4).

The 2011 contract services include:

1. Coordinating traffic control and parking for all entering and exiting the Fairgrounds.
2. Provide safety for all pedestrians entering the roadway for purposes of attending the Fair.
3. Street closures when necessary, providing alternate routes.

ALTERNATIVES CONSIDERED:

None

FISCAL REVIEW:

The 32nd District Agricultural Association reimburses all personnel costs for the City traffic management services at the Orange County Fairgrounds and Exposition Center.

LEGAL REVIEW:

The City Attorney's Office has reviewed the contract and has approved it as to form and content.

CONCLUSION:

Staff recommends approval of the contract covering the annual Orange County Fair at the Orange County Fairgrounds and Exposition Center. Approval is necessary to process billing for services with this State Agency.

DAVID MAKIYAMA	STEVE STAVELEY
Traffic Safety Bureau, Special Events	Chief of Police
COLLEEN O'DONOGHUE	TOM DUARTE
Assistant Director of Finance	City Attorney

DISTRIBUTION: City Manager
City Attorney
Finance Director
City Clerk

ATTACHMENTS:
1 "City of Costa Mesa Request for Police Service"
2 State of California "Standard Agreement"

CITY OF COSTA MESA

CALIFORNIA 92628-1200 P.O. BOX 1200

REQUEST FOR POLICE SERVICE

Description of event: 2011 Orange County Fair

Date of event: July 15th, 2011 through August 14th, 2011 Time of event: Varied

Exact location of event: Street 88 Fair Drive, Costa Mesa, Ca 92626 (Orange County Fairgrounds)

Building Various Room n/a

Name of person to contact: Steve Beazley Ph # 714-708-1577

Number of Police personnel required: Uniform As needed for event Plainclothes As needed

Name and address of party to be billed: 32nd District Agricultural Association/ O.C. Fair and Exposition Center , 88 Fair Dr, Costa Mesa, Ca 92626

To the attention of: Kristen Mason

We understand that we are to be billed no more than the maximum rate of $ 190.30 per hour of service rendered. Each City employment position will be billed at current rates established in the attached RATE DETERMINATION/SPECIAL EVENT SERVICES (Per A.R. 2.13). There will also be prearranged minimum number of hours identified for employment of City personnel. The Special Event employment position rates may be adjusted at any time by Costa Mesa City Officials based on new salary negotiations.

Please do not pay for this service until you are billed by the City of Costa Mesa.

Indemnity and Insurance Clause, Please Read:

1. "The contractor agrees to indemnify, defend and save harmless the City, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of this contract. The Contractor shall provide necessary Workman's Compensation Insurance at Contractor's own cost and expense."

2. Contractor agrees to maintain liability insurance in amounts satisfactory to City and to provide the City a certificate designating the City as a joint insured under Contractor's policy.

Dated: 6/7/11 Signed: [signature]

Mail Police Department and Finance Department copies to:

Costa Mesa Police Department
P.O. Box 1200
Costa Mesa, CA 92628

2925-42 PD34 White Copy – Police; Yellow Copy – Contractor; Pink Copy – Finance Department

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 06/03)

R A

AGREEMENT NUMBER
SA-47-11FT
REGISTRATION NUMBER
1126938

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
32ND DISTRICT AGRICULTURAL ASSOCIATION

CONTRACTOR'S NAME
COSTA MESA POLICE DEPARTMENT

2. The term of this Agreement is: **07/15/11** through **08/14/11** **FED ID: 95-6005030**

3. The maximum amount of this Agreement is: **$375,000.00**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work – **To provide and coordinate traffic management services at the 2011 OC Fair. See Page 2 for additional detail.**	Page 1 – 2
Exhibit B – Budget Detail and Payment Provisions (Attached hereto as part of this agreement)	Page 3
Exhibit C – General Terms and Conditions (Attached hereto as part of this agreement)	Pages 4 – 7
Check mark one item below as Exhibit D:	
☒ Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)	Pages 8 – 11
☐ Exhibit - D* Special Terms and Conditions	

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR	California Department of General Services Use Only
CONTRACTOR'S NAME *(if other than an individual, state whether a corporation, partnership, etc.)* **COSTA MESA POLICE DEPARTMENT**	
BY *(Authorized Signature)* — DATE SIGNED *(Do not type)* 3/18/11	
PRINTED NAME AND TITLE OF PERSON SIGNING **Les Gogerty, Acting Chief of Police**	
ADDRESS **P.O. Box 1200, Costa Mesa, CA 92626 (714) 754-5115**	
STATE OF CALIFORNIA	
AGENCY NAME **32ND DISTRICT AGRICULTURAL ASSOCIATION**	
BY *(Authorized Signature)* — DATE SIGNED *(Do not type)* 3/25/11	
PRINTED NAME AND TITLE OF PERSON SIGNING **Steve Beazley, President & CEO**	☐ Exempt per:
ADDRESS **88 Fair Drive, Costa Mesa, CA 92626**	

EXHIBIT B – BUDGET DETAIL & PAYMENT PROVISIONS

BUDGET DETAIL:

District Account #: 5100-85

PAYMENT PROVISIONS:

Net 30 upon satisfactory completion of services herein required and upon receipt of proper invoice.

All invoices are to be itemized, contain the District's Purchase Order (PO) number 42171 and be addressed as follows:

OC Fair & Event Center
Attn: Accounts Payable
88 Fair Drive
Costa Mesa, CA 92626

GTC 307

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION: Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY, its agents, employees, officers or volunteers, under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers, employees and volunteers, from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, and other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY, its agents, employees, officers or volunteers, under this Agreement.

Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, its agents, employees, officers or volunteers, under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the CITY and all of its officers, employees and volunteers, from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE, its agents, employees, officers or volunteers, under this Agreement.

6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
a. The Government Code Chapter on Antitrust claims contains the following definitions:
1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of $100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support

enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of $200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

EXHIBIT D – SPECIAL TERMS AND CONDITIONS

CCC-307 CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)	*Federal ID Number*
COSTA MESA POLICE DEPT.	95-6005030
By (Authorized Signature)	
Printed Name and Title of Person Signing	
LES GOHERN CAPTAIN	
Date Executed	*Executed in the County of*
3/18/11	ORANGE

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

1) the dangers of drug abuse in the workplace;
2) the person's or organization's policy of maintaining a drug-free workplace;
3) any available counseling, rehabilitation and employee assistance programs; and,
4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

1) receive a copy of the company's drug-free workplace policy statement; and,
2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES $50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over $100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e)

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and

Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.